

## Introduction

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## I. Background and Summary

The Fair Credit Reporting Act (FCRA) [15 USC 1681-1681u] became effective on April 25, 1971. The FCRA is part of a group of acts contained in the Federal Consumer Credit Protection Act [5 USC 1601 *et seq.*], such as the Truth in Lending Act and the Fair Debt Collection Practices Act. Congress subsequently passed the Consumer Credit Reporting Reform Act of 1996 (Reform Act), which substantially revised the FCRA. These revisions generally became effective on September 30, 1997. Minor amendments to the FCRA were made in 1997 and 1998. The Gramm-Leach-Bliley Act of 1999 made additional changes, including provisions permitting regulations to be adopted to implement the requirements of the FCRA.

The purposes of the FCRA, as amended, include the following:

- to regulate aspects of the consumer reporting industry;
- to place disclosure obligations on users of consumer reports;
- to establish requirements applicable to the furnishing of information to consumer reporting agencies; and
- to require timely responses to consumer inquiries regarding information maintained by consumer reporting agencies.

The FCRA places restrictions on the use of consumer reports and, in certain instances, requires the deletion of information from them.

Financial institutions may be subject to the FCRA as

- procurers and users of information (for example, as credit grantors, purchasers of dealer paper, or when opening deposit accounts);
- furnishers and transmitters of information (by reporting information to consumer reporting agencies or other third parties, or to affiliates);
- marketers of credit or insurance products; or
- employers.

Generally, financial institutions will not be considered to be consumer reporting agencies; however, it is possible for them to become consumer reporting agencies. Therefore, financial institutions should exercise careful scrutiny of their operations

to ensure that they comply with the requirements of the FCRA as applicable.

## **II. Relation to State Laws and Administrative Enforcement**

Section 624 [15 USC 1681t] preempts certain state law requirements while generally preserving the rights of states to legislate on matters covered by the FCRA (but only to the extent that state laws are *not inconsistent* with the FCRA). Areas where state requirements/prohibitions are entirely preempted include:

- furnishing and using consumer reports in connection with any credit or insurance transaction that is not initiated by the consumer; and
- the duties of a person taking adverse action with respect to a consumer under sections 615 (a) and (b).

In general, state requirements/prohibitions are preempted with respect to the exchange of information among affiliates. In addition, certain other areas of state laws are preempted as provided by section 624.

Section 621 [15 USC 1681s] establishes responsibilities for administrative enforcement of the FCRA. The Federal Trade Commission (FTC) is authorized to enforce the requirements for certain persons other than banks, savings associations, and credit unions. The banking and thrift supervisory agencies are authorized to enforce the FCRA with respect to their supervised institutions. State law enforcement officials also may enforce the FCRA through court actions. Federal regulators, however, have a right to intervene in any action brought by a state.

## **III. Important Definitions**

There are a number of definitions used throughout the FCRA. The more important definitions that financial institutions and examination staff should be aware of include the following:

## A. Consumer

A "consumer" is defined as an individual.

## B. Consumer Report

A "consumer report" is any written, oral, or other communication of any information by a consumer reporting agency that bears on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:

- credit or insurance to be used primarily for personal, family, or household purposes;
- employment purposes; or
- any other purpose authorized under section 604 [15 USC 1681b]. (Refer to section IV, "Requirements on Consumer Reporting Agencies.")

The term "consumer report" does not include:

- any report containing information solely about transactions or experiences between the consumer and the institution making the report;
- any communication of that transaction or experience information among entities related by common ownership or affiliated by corporate control (for example, different banks that are members of the same holding company, or subsidiary companies of a bank);
- communication of other information among persons related by common ownership or affiliated by corporate control if
  - it is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons; and
  - the consumer is given the opportunity, before the time that the information is communicated, to direct that the information not be communicated among such persons.

- any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device;
- any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer, such as a lender who has received a request from a broker conveys his or her decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made, and such person makes the disclosures to the consumer required under section 615 [15 USC 1681m]; or
- a communication described in section 603(o) [15 USC 1681a(o)] (which relates to certain reports to prospective employers).

### C. Person

A "person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

### D. Investigative Consumer Report

An "investigative consumer report" means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information does not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

### E. Adverse Action

The term "adverse action" has the same meaning as used in section 701(d)(6) [15 USC 1691(d)(6)] of the Equal Credit Opportunity Act (ECOA). Under the ECOA, it means a denial or revocation of credit, a change in the terms of an existing credit arrangement, or a refusal to grant credit in substantially the amount or on substantially the terms requested. Under the ECOA, the term does not include a refusal to extend additional credit under an existing credit arrangement where the

applicant is delinquent or otherwise in default, or where such additional credit would exceed a previously established credit limit. The term has the following additional meanings for purposes of the FCRA:

- a denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for, in connection with the underwriting of insurance;
- a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee;
- a denial or cancellation of, an increase in any charge for, or any other adverse or unfavorable change in the terms of, any license or benefit described in section 604(a)(3)(D) [15 USC 1681b(a)(3)(D)]. (Refer to section IV. A., "Permissible Purposes for Furnishing or Using Consumer Reports"); and
- an action taken or determination that is (a) made in connection with an application made by, or transaction initiated by, any consumer, or in connection with a review of an account to determine whether the consumer continues to meet the terms of the account, and (b) adverse to the interests of the consumer.

#### F. Employment Purposes

The term "employment purposes" when used in connection with a consumer report means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.

#### G. Consumer Reporting Agency

The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

### IV. Requirements on Consumer Reporting Agencies

Consumer reporting agencies have substantial obligations placed upon them by the

FCRA. These obligations are summarized below. Financial institutions and other persons that are users or furnishers of information from or to consumer reporting agencies should also be aware of the obligations of the consumer reporting agencies since certain requirements on the agencies will affect requirements on users or furnishers of information.

## A. Permissible Purposes for Furnishing or Using Consumer Reports

Section 604 [15 USC 1681b] prohibits a consumer reporting agency from furnishing a consumer report, except for the following purposes.

In addition to furnishing consumer reports in connection with credit or insurance pre-screens, a consumer reporting agency may furnish a consumer report

- when the consumer has authorized the release in writing;
- pursuant to a court order or subpoena issued by a federal grand jury;
- to an agency administering a state plan under section 454 of the Social Security Act [42 USC 654] to establish or modify child support awards;
- in response to a request by a state or local child support enforcement agency, if proper certification is provided; or
- to a person the consumer reporting agency has reason to believe
  - intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer;
  - intends to use the information for employment purposes;

- intends to use the information for underwriting insurance involving the consumer;
- intends to use the information for determining the consumer’s eligibility for a license or other benefit granted by a government instrumentality that is required by law to consider an applicant’s financial responsibility or status;
- intends to use the information, as a potential investor or servicer, or current insurer, in connection with a valuation of, or an assessment of the credit or prepayment risks associated with, an existing credit obligation; or
- otherwise has a legitimate business need for the information, either in connection with a business transaction initiated by the consumer, or to review an account to determine whether the consumer continues to meet the terms of the account.

This last provision permits an institution to obtain consumer reports, for example, for deposit services, such as a consumer opening a transaction account.

Consumers who are turned down when attempting to open an account because of information contained in a consumer report must be provided an adverse action notification. (Refer to section V, “Requirements on Users of Consumer Reports.”)

*Disclosures containing medical information.* A consumer reporting agency cannot furnish a consumer report containing medical information about a consumer without the consumer’s consent in the following circumstances:

- for employment purposes; or
- in connection with a credit or insurance transaction.

*Disclosures to government agencies.* Consumer reporting agencies, under section 608 [15 USC 1681f], may furnish to government agencies (federal, state, or local) identifying information on any consumer that is limited to the consumer’s name, address, former addresses, places of employment, or former places of employment.

This is a specific exemption from the general requirements of section 604 of the FCRA. Special rules under section 604 apply when a U.S. government agency head makes a written finding that a consumer report is relevant to a national security investigation being carried on by the agency.

*Disclosures to the Federal Bureau of Investigation (FBI).* Consumer reporting agencies are required to furnish information to the FBI when it requests the information pursuant to an authorized foreign counterintelligence investigation. Section 625 [15 USC 1681u] provides specific requirements on how the FBI and the consumer reporting agency must comply with the provisions of the FCRA in this area.

## B. Information Contained in Consumer Reports

Section 605 [15 USC 1681c] contains limitations on the type of information contained in consumer reports and the length of time it may be reported by a consumer reporting agency. Examples of information that must be excluded from a consumer report are as follows:

- bankruptcy cases that antedate the report by more than ten years measured from the date of entry of the order for relief or the date of adjudication;
- civil suits, civil judgments and records of arrest that, from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period;
- paid tax liens which, from date of payment, antedate the report by more than seven years;
- accounts placed for collection or charged off which antedate the report by more than seven years. (The reporting periods have been lengthened for certain adverse information pertaining to U.S. Government-insured or -guaranteed student loans, or pertaining to national direct student loans. Refer to sections 430A(f) and 463(c)(3) of the Higher Education Act of 1965 [20 USC 1080a(f) and 20 USC 1087cc(c)(3)], respectively);
- any other adverse information, other than records of convictions of crimes, which antedates the report by more than seven years.

These time restrictions do not apply in the case of a consumer report to be used in connection with

- a credit transaction involving, or which may reasonably be expected to involve, a principal amount of \$150,000 or more;
- the underwriting of life insurance involving, or which may reasonably be expected to involve, a face value of \$150,000 or more; or
- the employment of any individual at an annual salary that equals, or which may reasonably be expected to equal, \$75,000 or more.

*Indication of closure of account by consumer.* If a consumer reporting agency is notified pursuant to section 623(a)(4) [15 USC 1681s-2(a)(4)] that a credit account of a consumer was voluntarily closed by the consumer, the agency is to indicate that fact in any consumer report that includes information related to the account.

*Indication of dispute by consumer.* If a consumer reporting agency is notified pursuant to section 623(a)(3) [15 USC 1681s-2(a)(3)] that information regarding a consumer which was furnished to the agency is disputed by the consumer, the agency is to indicate that fact in each consumer report that includes the disputed information.

*Information on overdue child support obligations.* In contrast to prohibitions on reporting certain information, section 622 [15 USC 1681s-1] **requires** a consumer reporting agency to include, in any consumer report furnished by the agency, information on the failure of the consumer to pay overdue support where the information (a) is provided or verified by a specified government agency and (b) antedates the report by seven years or less.

### C. Investigative Consumer Reports

According to section 606 [15 USC 1681d], an investigative consumer report may not be procured or caused to be prepared unless the consumer has been provided a clear and accurate disclosure by the person requesting the report that an investigative consumer report may be obtained. This disclosure must contain a statement in writing of the consumer's right to request additional disclosures about the report, and a summary of the consumer's rights under the FCRA, mailed or otherwise delivered to the consumer not later than three days after the date on which the report was first requested. The person procuring the report from the

consumer reporting agency (or causing it to be prepared) must certify to the consumer reporting agency that the person has complied with these disclosure requirements and will comply in the event the consumer exercises his or her right to request additional disclosures.

#### D. Compliance Procedures

Section 607 [15 USC 1681e] requires consumer reporting agencies to maintain reasonable procedures to avoid violations of section 605 and limit distribution of consumer reports only to persons with a permissible purpose under section 604. Section 607 requires consumer reporting agencies to follow reasonable procedures in preparing consumer reports to assure maximum possible accuracy of the information that they report on consumers.

Section 607 also establishes rules for persons who obtain consumer reports for resale to other parties. Information generally must be provided back to the consumer reporting agency as to the identity of the end user of the report and each permissible purpose for which it was furnished to the end user.

Consumer reporting agencies may not prohibit the disclosure of the contents of a consumer report to the consumer by the user of the report, if adverse action has been taken by the user based in whole or in part on the report.

#### E. Disclosures to Consumers

Under sections 609 and 610 [15 USC 1681g and 1681h], a consumer reporting agency, upon request from a consumer, must clearly and accurately disclose the following information to the consumer in writing (unless the consumer has authorized another form of disclosure, including electronic means, if available from the agency) when it is provided proper identification:

- all information in the consumer's file at the time of the request (except that information about credit scores or other risk scores or predictors relating to the consumer need not be disclosed).
- the sources of the information (except that sources of information acquired solely for use in preparing an investigative consumer report and actually used for no other purpose need not be disclosed, provided that in the event an action is brought, such sources would be available to the plaintiff under appropriate discovery procedures).

- in general, the identity of each person that procured a consumer report
  - for employment purposes, during the two years preceding the request, or
  - for any other purpose, during the one year preceding the request.

Identification must include the name of the person or, if applicable, the trade name under which such person conducts business, and upon the consumer's request, the address and telephone number of the person.

- dates, original payees, and amounts of any checks upon which is based any adverse characterization of the consumer, included in the file at the time of the disclosure; and
- a record of all inquiries received during the one-year period preceding the request that identified the consumer in connection with a credit or insurance transaction not initiated by the consumer.

The consumer reporting agency shall provide, with each written disclosure made pursuant to the above requirements, a written summary of the consumer's rights in a form prescribed by the FTC. Consumer reporting agencies that maintain consumer files on a nationwide basis (refer to section 603(p) [15 USC 1681a (p)]) must include a toll-free telephone number.

## F. Procedures in Case of Disputed Accuracy

Under section 611 [15 USC 1681i], if the consumer disputes the completeness or accuracy of any information contained in a consumer file, and the consumer notifies the agency directly, the consumer reporting agency must

- reinvestigate, at no charge, and record the current status of the disputed information, or delete the item from the file, generally within 30 days of receiving notice from the consumer; and
- provide notification of the dispute to any person that provided any item of the information in dispute, within five business days from the agency's receipt of notice of the dispute.

The 30-day time period above may be extended up to an additional 15 days if the consumer submits additional relevant information during the 30-day period, but no such extension may be made if the information that is the subject of the

reinvestigation is found during the 30-day period to be inaccurate or incomplete or the consumer reporting agency determines that the information cannot be verified.

A consumer reporting agency may terminate a reinvestigation of a consumer dispute if it makes a reasonable determination that the dispute is frivolous or irrelevant. If it makes such a determination, it must notify the consumer within five business days. The notice must include the reasons for the determination and identify any information required to investigate the disputed information.

If, after any reinvestigation of any information disputed by a consumer, an item of information is found to be inaccurate or incomplete or cannot be verified, the consumer reporting agency must promptly delete or modify the information, as appropriate. The information cannot be reinserted into the file unless the person who furnishes the information certifies that the information is complete and accurate. If the information is reinserted, the consumer reporting agency must notify the consumer of the reinsertion in writing within five business days. The notice must include (a) the business name and address of any furnisher contacted and the telephone number of such furnisher, if reasonably available, or of any furnisher that contacted the consumer reporting agency, in connection with the reinsertion, and (b) a notice of the consumer's right to add a statement to the file disputing the accuracy or completeness of the information.

A consumer reporting agency must maintain reasonable procedures to prevent the reappearance in a consumer's file, and in consumer reports on the consumer, of information that is deleted, other than information that has been properly reinserted. Consumer reporting agencies that maintain consumer files on a nationwide basis must have an automated system through which a furnisher of information may report the results of a reinvestigation that finds incomplete or inaccurate information in a consumer's file to other such consumer reporting agencies.

Within five business days after completion of a reinvestigation, a consumer reporting agency must notify the consumer of the results of the investigation by mail or other means authorized by the consumer and available to the agency. If the reinvestigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute. The statement, or a clear and accurate summary thereof, must be put in any subsequent consumer report containing the disputed information, unless there are reasonable grounds to believe that the dispute is frivolous or irrelevant.

## G. Permissible Charges for Disclosures

Section 612 [15 USC 1681j] provides that a consumer reporting agency may not impose any charge on a consumer for providing any notification or disclosure required by the FCRA, except for those authorized under this section. A consumer reporting agency may impose a reasonable charge on a consumer when it

- makes a disclosure to the consumer pursuant to section 609 [15 USC 1681g]. That charge must not exceed \$8.50 for the year 2000 (the amount is to be adjusted annually by the FTC, based on changes in the consumer price index) and must be indicated before the consumer reporting agency provides the disclosure; and
- provides the notification pursuant to section 611(d) [15 USC 1681i(d)] at any time after the 30-day period beginning on the date of the notice of the results of the reinvestigation. That charge may not exceed the amount the agency would impose on each recipient of the notification for a consumer report, and must be indicated before furnishing the information.

According to section 611(d) [15 USC 1681i(d)], following any deletion of information which is found to be inaccurate or whose accuracy can no longer be verified or any notation as to disputed information, the consumer reporting agency must, at the request of the consumer, furnish notification that the item has been deleted, or the statement or summary of dispute referred to above, to any person specifically designated by the consumer who has within two years prior thereto received a consumer report for employment purposes, or within six months prior thereto received a consumer report for any other purpose, which contained the deleted or disputed information.

A consumer reporting agency that maintains a file on a consumer must make all disclosures required by section 609 [15 USC 1681g] at no charge if the consumer has requested them under section 609 within 60 days after receiving:

- a notice of adverse action pursuant to section 615 [15 USC 1681m]; or
- notification from a debt collection agency affiliated with the consumer reporting agency stating that the consumer's credit rating has been or may be adversely affected.

The consumer reporting agency also must make the disclosures required by section 609 [15 USC 1681g] at no charge, once in any 12-month period, if the consumer requests them and certifies in writing that he or she

- is unemployed and intends to apply for employment in the 60-day period beginning on the date on which the certification is made;
- is a recipient of public welfare assistance; or
- has reason to believe that the file on the consumer at the agency contains inaccurate information due to fraud.

## H. Public Record Information for Employment Purposes

Under section 613 [15 USC 1681k], a consumer reporting agency that furnishes a consumer report for employment purposes and for that purpose compiles and reports public record information that is likely to have an adverse effect upon a consumer's ability to obtain employment generally must

- at the time the public record information is reported to the user of the report, notify the consumer that public record information is being reported, together with the name and address of the person to whom the information is being reported; or
- maintain strict procedures to ensure that such public record information is complete and up to date.

## I. Restrictions on Investigative Consumer Reports

Section 614 [15 USC 1681I] provides that when a consumer reporting agency prepares an investigative consumer report, no adverse information in the consumer report (other than public record information) may be included in a subsequent consumer report, unless the information

- has been verified in the process of making the subsequent report; or
- was received within the three-month period preceding the date the subsequent report is furnished.

## V. Requirements on Users of Consumer Reports

### A. Information Obtained from a Consumer Report

Section 615(a) [15 USC 1681m(a)] requires that if any person takes any adverse action with respect to any consumer that is based in whole or in part on any information contained in a consumer report, the person must

- provide oral, written, or electronic notice of the adverse action to the consumer;
- provide to the consumer orally, in writing, or electronically, the name, address, and telephone number of the consumer reporting agency from which it received the information (including a toll-free telephone number established by the agency, if the consumer reporting agency maintains files on a nationwide basis); and a statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the consumer the specific reasons why the adverse action was taken; and
- provide the consumer an oral, written, or electronic notice of the consumer's right to obtain a free copy of the consumer report within 60 days of receiving notice of the adverse action, and the consumer's right to dispute the accuracy or completeness of any information in the consumer report with the consumer reporting agency.

### B. Information Obtained from a Source Other Than a Consumer Report

Section 615(b)(1) [15 USC 1681m(b)(1)] provides that if consumer credit is denied or the charge for such credit is increased, partially or wholly on the basis of information obtained from a person other than a consumer reporting agency bearing upon the consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, the user

- must clearly and accurately disclose the consumer's right to file a written request for the reasons for the adverse action; and
- if it receives such a request within 60 days after the consumer learns of the adverse action, must, within a reasonable period of time, disclose the nature of the adverse information.

### C. Information Obtained from an Affiliate

Section 615(b)(2) [15 USC 1681m(b)(2)] provides that if a user takes an adverse action involving credit (taken in connection with a transaction initiated by a consumer), insurance or employment, it must notify the consumer of the adverse action, if it took the action based in whole or part on information provided by an affiliate that

- bears upon the consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living; and
- is not information solely as to the transactions or experiences with the consumer on the part of the person furnishing the information, or information in a consumer report.

The notification must inform the consumer that the consumer may obtain a disclosure of the nature of the information relied upon by making a written request within 60 days of transmittal of the adverse action notice. If the consumer makes such a request, the user must disclose the nature of the information not later than 30 days after receiving the request.

## D. Using Consumer Reports for Employment Purposes

Section 604(b)(2) [15 USC 1681b(b)(2)] generally requires the written permission of the consumer to procure a consumer report for “employment purposes.”

Moreover, a clear and conspicuous disclosure that a consumer report may be obtained for employment purposes generally must be provided in writing to the consumer prior to procuring a report.

Prior to taking any adverse action as to employment based in whole or in part on the consumer report, the user must generally provide to the consumer

- a copy of the report; and
- the FTC notice described within section 609(c)(3) [15 USC 1681g].

At the time a user of the report takes adverse action in an employment situation, an adverse action notice, as required by section 615, also must be provided to the consumer.

## VI. Responsibilities Placed on Furnishers of Information

Section 623 [15 USC 1681s-2] contains a number of new requirements for persons furnishing information to consumer reporting agencies.

*Duties of furnishers to provide accurate information.* A person may, but need not, specify an address for receipt of notices from consumers concerning inaccurate information. If the person specifies such an address, then the person may not furnish information relating to a consumer to any consumer reporting agency if (a) the person has been notified by the consumer, at the specified address, that the information is inaccurate, and (b) the information is in fact inaccurate. If the person does not specify an address, then the person may not furnish any information relating to a consumer to any consumer reporting agency, if the person knows or consciously avoids knowing that the information is inaccurate.

When a person, who regularly and in the ordinary course of business furnishes information to one or more consumer reporting agencies about the person’s transactions or experiences with any consumer, determines that any such information is not complete or accurate, the person must promptly notify the consumer reporting agency of that determination. The person also must provide to the agency any corrections to that information, or any additional information,

necessary to make the information provided by the person to the agency complete and accurate and must not thereafter furnish to the agency any of the information that remains incomplete or inaccurate.

If the completeness or accuracy of any information furnished by a person to a consumer reporting agency is disputed to such person by a consumer, that person may not furnish the information to any consumer reporting agency without notice that the information is disputed by the consumer.

*Voluntary closures of accounts.* Any person, who regularly and in the ordinary course of business furnishes information to a consumer reporting agency regarding a consumer who has a credit account with that person, must notify the agency of the voluntary closure of the account by the consumer in information regularly furnished for the period in which the account is closed.

*Notice involving delinquent accounts.* A person who furnishes information to a consumer reporting agency about a delinquent account being placed for collection, charged off, or subjected to any similar action must, not later than 90 days after furnishing the information to the consumer reporting agency, notify the agency of the month and year of the commencement of the delinquency that immediately preceded the action.

*Duties upon notice of dispute.* Whenever a person receives a notice of dispute from a consumer reporting agency regarding the accuracy or completeness of any information provided by the person pursuant to section 611, that person must

- conduct an investigation regarding the disputed information;
- review all relevant information provided by the consumer reporting agency along with the notice;
- report the results of the investigation to the consumer reporting agency; and
- if the information is found to be incomplete or inaccurate, report those results to all nationwide consumer reporting agencies to which the person previously provided the information.

The investigations, reviews, and reports required to be made must be completed within 30 days. The time period may be extended for 15 days if a consumer reporting agency receives additional relevant information.

Enforcement of the responsibilities of furnishers of information under section 623 (except those described under "Duties Upon Notice of Dispute") is reserved exclusively for the federal and state agencies and officials, including the financial institution regulatory agencies, identified under section 621 [15 USC 1681s]. (Refer to section II, "Relation to State Laws and Administrative Enforcement.")

## VII. Pre-Screening Requirements

The practice of using consumer reports for the purpose of selecting pools of individuals for solicitation of financial or other products has expanded substantially since the 1970s. Guidance on these issues is discussed in this section.

### A. Firm Offer of Credit or Insurance

The term "firm offer of credit or insurance" means any offer of credit or insurance to a consumer that will be honored if the consumer is determined, based on information in a consumer report on the consumer, to meet the specific criteria used to select the consumer for the offer, except that the offer may be further conditioned on one or more of the following

- the consumer being determined, based on information in the consumer's application for the credit or insurance, to meet specific criteria bearing on creditworthiness or insurability, as applicable, that are established
  - before selection of the consumer for the offer; and
  - for the purpose of determining whether to extend credit or insurance pursuant to the offer.
- verification
  - that the consumer continues to meet the specific criteria used to select the consumer for the offer, by using information in a consumer report on the consumer, information in the consumer's application for the credit or insurance, or other information bearing on the creditworthiness or insurability of the consumer; or
  - of the information in the consumer's application for the credit or insurance, to determine that the consumer meets the specific criteria bearing on creditworthiness or insurability.

- the consumer furnishing any collateral that is a requirement for the extension of the credit or insurance that was
  - established before selection of the consumer for the offer of credit or insurance; and
  - disclosed to the consumer in the offer of credit or insurance.

## B. Credit or Insurance Transaction Not Initiated by the Consumer

The term “credit or insurance transaction that is not initiated by the consumer” is a new term defined in section 603(m) [15 USC 1681a(m)] for use in dealing with pre-screening issues. The term does not include the use of a consumer report by a person with whom the consumer has an account or insurance policy for the following purposes:

- reviewing the account or insurance policy; or
- collecting the account.

## C. Furnishing Reports in Connection with Credit Transactions not Initiated by the Consumer

Section 604(c) [15 USC 1681b(c)] establishes requirements for consumer reporting agencies when furnishing consumer reports for use in connection with pre-screens. A consumer reporting agency may only furnish a person with a consumer report for pre-screening purposes if

- the consumer authorizes the agency to provide such report to such person, or
- the transaction consists of a firm offer of credit or insurance and
  - the consumer reporting agency has established the required procedures to permit consumers to elect to be excluded from pre-screened lists; and
  - no such election is in effect as to the consumer.

A person receiving a pre-screened list from a consumer reporting agency may, for each consumer on the list, receive only the following information:

- the name and address of the consumer;
- an identifier that is not unique to the consumer and that is used by the person solely for the purpose of verifying the identity of the consumer; and
- other information about the consumer that does not identify the relationship or experience of the consumer with a particular creditor or other entity.

As indicated above, a consumer reporting agency must establish procedures that allow a consumer to notify the agency that the consumer elects to be excluded from pre-screen lists furnished by the agency. Notifications can be made through a notification system maintained by the agency or by submitting a signed notice of election form issued by the agency. Exclusion requests made through the notification system expire two years following notification unless earlier withdrawn. If the request is made on the election form, it never expires, although it may be withdrawn.

#### D. Duties of users making written solicitations on the basis of information from consumer files

Under section 615(d) [15 USC 1681m(d)], any person who uses a consumer report on any consumer in connection with any credit or insurance transaction that is not initiated by the consumer and that is provided to that person in accordance with paragraph C. above must provide with each written solicitation, a clear and conspicuous statement that

- information contained in a consumer's consumer report was used in connection with the offer;
- the consumer received the offer because he or she satisfied the criteria for creditworthiness or insurability used to screen for the offer;
- if applicable, the credit or insurance may not be extended if, after the consumer responds, it is determined that the consumer does not meet the criteria used for screening or any applicable criteria bearing on creditworthiness or insurability, or the consumer does not furnish required collateral; and
- consumers have the right to prohibit use of information in their consumer file in connection with future pre-screened offers of credit or insurance by contacting a notification system established under section 604(e)(5) by the consumer reporting

agency that provided the report. The address and toll-free telephone number of the appropriate notification system must be provided.

*Record Retention Requirements.* Section 615(d)(3) requires a person who makes an offer of credit or insurance to a consumer in a transaction not initiated by the consumer to maintain on file the criteria used to select the consumer to receive the offer, all criteria bearing on creditworthiness or insurability, as applicable, that are the basis for determining whether or not to extend credit or insurance pursuant to the offer, and any requirement for the furnishing of collateral as a condition of the extension of credit or insurance, until the expiration of the three-year period beginning on the date on which the offer is made to the consumer.

## **VIII. Civil Liability, Limitation of Actions, and Unauthorized Disclosure**

Sections 616 and 617 [15 USC 1681n and 1681o] establish the circumstances under which persons violating the FCRA may be liable for willful or negligent noncompliance. Civil liability awards for violations may include actual damages, court costs, attorneys' fees and, for willful noncompliance, punitive damages.

Section 618 [15 USC 1681p] establishes a statute of limitations for bringing actions under the FCRA. The time period is generally two years from the date the liability arises; however, it can be extended for certain willful and material misrepresentations to a date two years after the individual discovers the misrepresentation.

Sections 619 and 620 [15 USC 1681q and 1681r] make it a crime for any person to knowingly and willfully obtain information on a consumer from a consumer reporting agency under false pretenses, and for any officer or employee of a consumer reporting agency knowingly and willfully to provide information concerning an individual to a person not authorized to receive it. The penalty for violation is a fine, imprisonment for up to two years, or both.

1. To determine the financial institution's compliance with the FCRA.
2. To assess the quality of the financial institution's compliance management policies and procedures for implementing the FCRA.
3. To determine the reliance that can be placed on the financial institution's internal controls and procedures for monitoring the institution's compliance with the FCRA.
4. To initiate corrective action when violations of law are identified, or when policies or internal controls are deficient.

# Fair Credit Reporting Examination Procedures

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## I. Initial Procedures

1. Through discussions with management and review of available information, determine if the institution's internal controls are adequate to ensure compliance in the area under review. Consider the following:
  - a. Organization charts
  - b. Process flowcharts
  - c. Policies and procedures
  - d. Loan documentation
  - e. Checklists
  - f. Computer program documentation
2. Review any compliance audit material, including work papers, and reports to determine whether
  - a. the procedures address all provisions as applicable (refer to section II of these procedures, "Verification of Policies and Procedures");
  - b. steps are taken to follow up on previously identified deficiencies;
  - c. the procedures used include samples covering all product types and decision centers;
  - d. the work performed is accurate;
  - e. significant deficiencies and their causes are included in reports to management and/or to the board of directors;
  - f. corrective action is taken in a timely and appropriate manner; and
  - g. the frequency of compliance review is appropriate.

3. Through discussions with management, determine if the institution communicates customer information to affiliates or non-affiliates. If so, obtain and review the contracts or other documents governing such communications.

## II. Verification of Policies and Procedures

1. From recent reports provided to a consumer reporting agency (CRA), select a sample of reported items and the corresponding loan or collection files. Determine whether the institution's procedures are adequate to ensure that
  - a. it did not report information that it knew or consciously avoided knowing was inaccurate. Section 623(a)(1)(A) [15 USC 1681s-2(a)(1)(A)]. This is not applicable if the institution has, in a clear and conspicuous manner, provided the consumer with an address for notices of inaccurate information. Section 623(a)(1)(C) [15 USC 1681s-2(a)(1)(C)];
  - b. it did not report information if it was notified by the consumer that the information was inaccurate and the information was, in fact, inaccurate. Section 623(a)(1)(B) [15 USC 1681s-2(a)(1)(B)];
  - c. if it determined that any information it furnished to a CRA was incomplete or inaccurate, it promptly notified the CRA, provided the CRA with corrections or additional information to make the information complete and accurate, and thereafter did not send the CRA the inaccurate or incomplete information (if the institution regularly furnishes information to a CRA). Section 623(a)(2) [15 USC 1681s-2(a)(2)];
  - d. if a consumer disputed the completeness or accuracy of any information the institution furnished, and the institution continued furnishing the information, it also furnished a notice of the dispute. Section 623(a)(3) [15 USC 1681s-2(a)(3)];
  - e. if a consumer voluntarily closed a credit account with the institution, and the institution regularly furnishes information to a CRA about that consumer, the institution notified the CRA of the account-closing, and did so as part of the information regularly furnished for the period in which the account was closed. Section 623(a)(4) [15 USC 1681s-2(a)(4)];
  - f. within ninety days of furnishing information about a delinquent account

being placed for collection, charged-off, or subjected to any similar action, the institution notified the CRA of the month and year of commencement of the delinquency that immediately preceded the action. Section 623(a)(5) [15 USC 1681s-2(a)(5)].

2. Review a sample of notices of disputes received from a CRA and determine whether the institution
  - a. conducted an investigation with respect to the disputed information. Section 623(b)(1)(A) [15 USC 1681s-2(b)(1)(A)];
  - b. reviewed all relevant information provided by the CRA. Section 623(b)(1)(B) [15 USC 1681s-2(b)(1)(B)];
  - c. reported the results of the investigation to the CRA. Section 623(b)(1)(C) [15 USC 1681s-2(b)(1)(C)];
  - d. reported the results of the investigation to all other nationwide CRAs to which the information was furnished, if the investigation found that the reported information was inaccurate or incomplete. Section 623(b)(1)(D) [15 USC 1681s-2(b)(1)(D)].
3. Review a sample of applications and accounts (for example, credit, deposit, insurance, and other) where the institution took adverse action (refer to section III of the introduction, "Important Definitions") and determine whether it complied with the adverse action notification requirements of section 615 [15 USC 1681m]. When the following types of notice are required, they must contain the following elements:
  - a. When a section 615(a) notice is required, the notice must contain: notice of the adverse action; the name, address, and telephone number of the CRA that furnished the consumer report (including a toll-free number if the CRA is a nationwide CRA); a statement that the CRA did not make the decision to take the adverse action and cannot provide the specific reasons why the adverse action was taken; notice of the consumer's right to obtain a free copy of a consumer report on the consumer from that CRA in accordance with section 612(b) [15 USC 1681j], including notice of the sixty-day period under that section for obtaining the copy; and notice of the consumer's right to dispute with the CRA the completeness or accuracy of any information in the consumer report. Section 615(a) [15 USC 1681m(a)];

- b. When a section 615(b)(1) notice is required, the notice must contain: notice of the adverse action; and notice that if the institution receives a written request from the consumer within sixty days the institution must, within a reasonable period of time, disclose the nature of the information on which the adverse action was based. Section 615(b)(1) [15 USC 1681m(b)(1)];
  - c. When a section 615(b)(2) notice is required, the notice must contain: notice of the adverse action; and notice that, if the institution receives a written request from the consumer within sixty days, the institution must, within thirty days of receiving the request, disclose the nature of the information on which the adverse action was based. Section 615(b)(2) [15 USC 1681m(b)(2)].
4. If the institution has sent consumers credit or insurance solicitations, review the materials sent and a sample of accounts opened as a result. Determine whether
- a. the institution received only the information from CRAs permissible under section 604(c)(2) [15 USC 1681b (c)(2)];
  - b. each written solicitation was accompanied by a clear and conspicuous statement that
    - i. information contained in the consumer's consumer report was used in connection with the transaction. Section 615(d)(1)(A) [15 USC 1681m(d)(1)(A)];
    - ii. the consumer received the offer of credit or insurance because the consumer satisfied the creditworthiness or insurability criteria under which the consumer was selected for the offer. Section 615(d)(1)(B) [15 USC 1681m(d)(1)(B)];
    - iii. if applicable, the credit or insurance may not be extended if, after the consumer responds to the offer, the consumer does not: meet the criteria used to select the consumer for the offer; meet any other applicable criteria bearing on creditworthiness or insurability (such as criteria for determining whether or not to extend credit or insurance pursuant to the offer); or furnish any required collateral. Section 615(d)(1)(C) [15 USC 1681m(d)(1)(C)];

- iv. the consumer has a right to prohibit information contained in the consumer's file with any CRA from being used in connection with any credit or insurance transaction that is not initiated by the consumer. Section 615(d)(1)(D) [15 USC 1681m(d)(1)(D)];
  - v. the consumer may exercise this right by notifying a notification system established under section 604(e) [15 USC 1681b(e)]. (Refer to section VII of the introduction, "Pre-Screening Requirements.") Section 615(d)(1)(E) [15 USC 1681m(d)(1)(E)];
  - vi. the address and toll-free telephone number of the notification system. Section 615(d)(2) [15 USC 1681m(d)(2)].
- c. for each offer of credit or insurance to each consumer, the institution maintains the following on file for the three-year period beginning on the date on which the offer was made: the criteria used to select the consumer to receive the offer; all criteria bearing on creditworthiness or insurability, as applicable, that are the basis for determining whether or not to extend credit or insurance pursuant to the offer; and any requirement for the furnishing of collateral as a condition of the extension of credit or insurance. Section 615(d)(3) [15 USC 1681m(d)(3)];
- d. the institution actually honored the terms of the offers to consumers who had been determined (based on information in the consumers' consumer reports) to meet specific selection criteria. Section 603(l) [15 USC 1681a(l)]. However, the institution is not required to honor the offer if
- i. the institution determines, based on information contained in the consumer's application, that the consumer does not meet specific criteria established for the purpose of extending credit or insurance pursuant to the offer. Section 603(l)(1) [15 USC 1681a(l)(1)];
  - ii. after verification of the information in the application, the consumer does not meet the specific criteria. Section 603(l)(2)(B) [15 USC 1681a(l)(2)(B)];
  - iii. based on the application, consumer report or other information bearing on creditworthiness or insurability, the institution determines that the consumer does not continue to meet the specific

selection criteria. Section 603(l)(2)(A) [15 USC 1681a(l)(2)(A)]; or

- iv. the consumer does not meet specific collateral requirements, established before selection of the consumer for the offer and disclosed in the offer. Section 603(l)(3) [15 USC 1681a(l)(3)].
5. If the institution uses consumer reports for employment purposes, select one or more employment postings for review. Determine whether
- a. the institution provided the consumer with a clear and conspicuous disclosure, in the form of a document consisting solely of that disclosure, and the consumer authorized in writing the procurement of the report, before the report was obtained by the institution. Section 604(b)(2)(A), (B) [15 USC 1681b(b)(2)(A),(B)];
  - b. prior to taking any adverse action (refer to section III of the introduction, "Important Definitions") based in whole or in part on the information contained in the consumer report, the institution provided to the consumer
    - i. a copy of the consumer report. Section 604(b)(3) [15 USC 1681b(b)(3)], and
    - ii. a copy of the FTC's statement of consumers' rights under the FCRA as prescribed under Section 609(c)(3) [15 USC 1681g(c)(3)]. Section 604(b)(3) [15 USC 1681b(b)(3)].
  - c. after an adverse decision is made for employment purposes based in whole or in part on information contained in a consumer report, the institution provides the required type of adverse action notice. Section 615(a) [15 USC 1681m(a)].
6. If the institution shared information with affiliates (other than about its own transactions or experiences with the consumer), verify whether
- a. the institution disclosed that the information may be shared and gave the consumer the opportunity to opt out. Section 603(d)(2)(A) [15 USC 1681a(d)(2)(A)]; and
  - b. the consumer did not opt out. Section 603(d)(2)(A) [15 USC 1681a(d)(2)(A)]

7. If the institution procures or causes to be prepared an investigative consumer report (refer to section III of the introduction, "Important Definitions,") determine whether the following requirements have been met
  - a. the institution clearly and accurately disclosed to the consumer that an investigative consumer report may be obtained. Section 606(a)(1) [15 USC 1681d(a)(1)];
  - b. the disclosure contained a statement of the consumer's right to request additional disclosures about the report, and a summary of the consumer's rights under the FCRA. Section 606(a)(1)(B) [15 USC 1681d(a)(1)(B)];
  - c. the disclosure is in writing and is mailed or otherwise delivered to the consumer not later than three days after the date on which the report was first requested. Section 606(a)(1)(A) [15 USC 1681d(a)(1)(A)] ;
  - d. the person procuring the report, or causing it to be prepared, certified to the CRA that the person has complied with these disclosure requirements and will comply in the event the consumer exercises the right to request additional disclosures. Section 606(a)(2) [15 USC 1681d(a)(2)].
8. Verify that the institution has procedures to ensure that consumer reports are used only for the permissible purposes that the institution has certified to the CRAs from which it obtained the reports. Section 604(f) [15 USC 1681b(f)].

### **III. Procedures for Consumer Reporting Agencies**

1. If the institution is a CRA [section 603(f); 15 USC 1681a(f)], determine whether the institution's procedures are adequate by
  - a. reviewing a sample of consumer reports to verify that they were provided only for permissible purposes. Section 604 [15 USC 1681b];
  - b. verifying that it requires users to identify themselves, certify the purposes for which the information is sought and certify that the information will be used for no other purpose. Section 607(a) [15 USC 1681e(a)];
  - c. reviewing a sample of reports to determine whether the CRA followed reasonable procedures to assure maximum possible accuracy of the

- information concerning the individual to whom the consumer report related. Section 607(b) [15 USC 1681e(b)];
- d. reviewing the CRA's required notice (prescribed by the FTC) to each person, who regularly and in the ordinary course of business, furnishes the CRA with information on any consumer or to whom the CRA furnishes a consumer report. Section 607(d) [15 USC 1681e(d)].
  - e. determining whether the CRA obtained the required information as to the identity and permissible purpose of the end-user of a consumer report where the report is procured for resale. Section 607(e)(1) [15 USC 1681e(e)(1)];
2. Review a sample of responses to disclosure requests from consumers to verify that the CRA clearly and accurately
- a. disclosed to the consumer all information in the CRA's files on the consumer at the time of request by the consumer (credit scores or any other risk scores or predictors relating to the consumer do not need to be disclosed). Section 609(a)(1) [15 USC 1681g(a)(1)];
  - b. disclosed to the consumer the sources of the information (sources of information acquired solely for use in preparing an investigative consumer report and actually used for no other purpose do not need to be disclosed). Section 609(a)(2) [15 USC 1681g(a)(2)];
  - c. disclosed to the consumer the dates, original payees, and amounts of any checks upon which is based any adverse characterization of the consumer. Section 609(a)(4) [15 USC 1681g(a)(4)];
  - d. disclosed to the consumer a record of all inquiries received by the consumer reporting agency during the one-year period preceding the consumer's request that identified the consumer in connection with a credit or insurance transaction that was not initiated by the consumer. Section 609(a)(5) [15 USC 1681g(a)(5)];
  - e. disclosed to the consumer the identity of each person (including name, and, if requested, address and telephone number) that procured a consumer report for employment purposes during the two years preceding the request, or for any other purpose during the year preceding the request. Section 609(a)(3) [15 USC 1681g(a)(3)]; and

- f. included a copy of the FTC's statement of consumers' rights under the FCRA. Section 609(c) [15 USC 1681g(c)].
3. When the CRA is furnishing consumer reports for employment purposes and it compiles and reports items of information on consumers that are matters of public record and are likely to have an adverse effect on the consumer's ability to obtain employment, does the CRA
    - a. at the time the public record information is reported to the user of the consumer report, notify the consumer that the information is being reported, together with the name and address of the person to whom the information is being reported? Section 613(a)(1) [15 USC 1681k(a)(1)];  
or
    - b. maintain strict procedures designed to ensure that, whenever public record information that is likely to have an adverse effect on a consumer's ability to obtain employment is reported, the information is complete and up to date? Section 613(a)(2) [15 USC 1681k(a)(2)].
  4. When preparing an investigative consumer report, does the CRA verify any adverse information contained in the report if the information was included in a prior investigative consumer report, unless the information was received within the three-month period preceding the date that the subsequent report is furnished? Information that is a matter of public record does not have to be verified. Section 614 [15 USC 1681l].
  5. Does the CRA have reasonable procedures to ensure that in any consumer report it furnishes there is no
    - a. information about bankruptcy cases that is more than ten years old (counting back from the date of the report to the date of the entry of the order of relief or the date of adjudication, as applicable). Section 605(a)(1) [15 USC 1681c(a)(1)];
    - b. other information that is more than seven years old (for example, civil suits, civil judgments, and arrest records). Section 605(a)(2-5) [15 USC 1681e(a)(2-5)].

**Note:** The seven-year period is counted in different ways for different items of information. Refer to section IV of the introduction, "Requirements on Consumer Reporting Agencies."

**Note:** Records of criminal convictions are not subject to a time limit.

6. Review a sample of accounts where the consumer directly notified the CRA to dispute the completeness or accuracy of any information in his or her file. Determine if the CRA is in compliance with the provisions of Section 611 [15 USC 1681i] applicable to reinvestigations of disputed information.
  - a. Verify that the CRA reinvestigated the complaint free of charge and recorded the current status of the disputed information or deleted the item from its file. The reinvestigation of the dispute must generally be completed within thirty calendar days from the date the agency received notice of the dispute from the consumer. (The thirty-day period may be extended for up to an additional fifteen days if the consumer submits additional relevant information during the thirty-day period, but not if the information that is the subject of the reinvestigation is found to be inaccurate or incomplete or if the CRA determines that the information cannot be verified during the initial thirty-day period.) Section 611(a)(1) [15 USC 1681i(a)(1)].
  - b. Verify that, within five business days of receipt of a notice of a dispute, the CRA provided notification of the dispute to any person who provided any item of information in dispute along with all relevant information regarding the dispute that the CRA has received from the consumer. Section 611(a)(2) [15 USC 1681i(a)(2)].
  - c. Verify that, if the CRA reasonably determined that a dispute was frivolous or irrelevant, the CRA provided the required notice of determination to the consumer not later than five business days after making the determination. Section 611(a)(3) [15 USC §1681i(a)(3)].
  - d. Verify that, where a reinvestigation found an item of information to be inaccurate, incomplete or unverifiable, the CRA promptly deleted that item from the consumer's file or modified the item, as appropriate, based on the results of the reinvestigation. Section 611(a)(5)(A) [15 USC 1681i(a)(5)(A)].

- e. Verify that the CRA maintained reasonable procedures to prevent the reappearance of information in a consumer's file, and in consumer reports on the consumer, of any information deleted from the file through a reinvestigation. (If any information has been deleted from the consumer's file pursuant to a reinvestigation, that information may not be reinserted in the file by the agency unless the person who furnishes the information certifies the information is complete and accurate, and the CRA must provide appropriate notice to the consumer within five business days after the reinsertion.) Section 611(a)(5)(C),(B) [15 USC 1681i(a)(5)(C), (B)].
  - f. Verify that, not later than five business days after the completion of the reinvestigation, the CRA provided written notice to the consumer of the results of the reinvestigation in the manner prescribed in section 611(a)(6). [15 USC 1681i(a)(6)].
7. Determine if the agency only charges those fees permitted by section 612 (15 USC 1681j) for making certain disclosures and notifications.

## **IV. Conclusions**

1. Summarize all violations.
2. If the violation(s) noted above represent(s) a pattern or practice, determine the root cause by identifying weaknesses in internal controls, compliance review, training, management oversight, or other factors.
3. Identify action needed to correct violations and weaknesses in the institution's compliance system, as appropriate.
4. Discuss findings with management and obtain a commitment for corrective action.
5. Determine if any enforcement actions are called for and notify appropriate personnel in your agency.